

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**CHERYL K. CARLSON and  
DENNIS E. CARLSON, as Personal  
Representative for the ESTATE OF  
SHIRLEY CARLSON,**

**Plaintiffs,**

**vs.**

**FREIGHTLINER L.L.C, a  
Delaware Corporation,**

**Defendant.**

**CASE NO. 4:03-CV-3208**

**BRIEF IN SUPPORT OF DEFENDANT'S  
MOTION TO STAY MAGISTRATE  
JUDGE'S ORDER**

**INTRODUCTION**

The Defendant has filed a Statement of Appeal of the Magistrate Judge's Memorandum and Order compelling the Defendant to respond to certain discovery requests propounded by the Plaintiff. (Filing Nos. 35 and 36). The Defendant has now moved the Court for an order staying the Memorandum and Order pending resolution of the Statement of Appeal pursuant to NELR 72.3(e). (Filing No. 36).

**ARGUMENT**

It is the Defendant's position that the Memorandum and Order (Filing No. 35) should be stayed pending the resolution of the Statement of Appeal. The Memorandum and Order compels the Defendant to provide discovery on the issue of punitive damages. The specific interrogatories that relate to the issue of punitive damages are Interrogatories No. 4, 5, 7, 9, 10, 11, and 13. (Filing No. 30, Plaintiff's Interrogatories). The Defendant should

not be placed in the position of responding unnecessarily to discovery requests that may later prove to be irrelevant depending upon the Court's determination of the choice of law issue. In fact, on March 30, 2004 the Court denied the Plaintiff's motion for partial summary judgment on whether Oregon's law on punitive damages should apply to this case. (Filing No. 38). This is a compelling reason at this stage to stay the Magistrate Judge's Memorandum and Order.

#### CONCLUSION

For the reasons argued above, the Defendant would request that the Court stay the Memorandum and Order of the Magistrate Judge pending the resolution of the Defendant's Statement of Appeal of the Magistrate Judge's Memorandum and Order

DATED this 31<sup>st</sup> day of March, 2004.

FREIGHTLINER L.L.C., Defendant,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 31, 2004, I electronically filed the foregoing **BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO STAY THE MAGISTRATE JUDGE'S ORDER** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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